

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

MISTY FAIR, o/b/o)
C.W.A., a minor child,)
)
Plaintiff,)
)
vs.) Case No. CIV-23-382-GLJ
)
MARTIN O'MALLEY,¹)
Commissioner of the Social)
Security Administration,)
)
Defendant.)

**OPINION AND ORDER AWARDING
ATTORNEY'S FEES TO THE PLAINTIFF UNDER THE EAJA**

Plaintiff Misty Fair, on behalf of C.W.A, a minor child, is the prevailing party in this action under the Social Security Act. Plaintiff seeks an award of attorney's fees in the amount of \$5,708.00 pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) [Docket No. 18]. The Commissioner has no objection to the fee award [Docket No. 19].

Upon review of the record herein, the Court finds that the requested amount is reasonable and that the Commissioner should be ordered to pay it to Plaintiff as the prevailing party herein. *See* 28 U.S.C. § 2412(d)(1)(A) ("Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a),

¹ On December 20, 2023, Martin J. O'Malley became the Commissioner of Social Security. In accordance with Fed. R. Civ. P. 25(d), Mr. O'Malley is substituted for Kilolo Kijakazi as the Defendant in this action.

incurred by that party in any civil action (other than cases sounding in tort)[.]"); *see also Manning v. Astrue*, 510 F.3d 1246, 1251 (10th Cir. 2007) ("The EAJA therefore permits attorney's fees reimbursement to financially eligible prevailing parties, who make a proper application, and not to their attorneys.").

Accordingly, IT IS ORDERED that Plaintiff's Motion for Award of Attorney Fees Pursuant to the *Equal Access to Justice Act* [Docket No. 18] is hereby granted and that the Government is therefore ordered to pay the above-referenced amount to Plaintiff as the prevailing party herein. IT IS FURTHER ORDERED that if Plaintiff's attorney is subsequently awarded any fees pursuant to 42 U.S.C. § 406(b)(1), said attorney shall refund the smaller amount of such fees to the Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

DATED this 2nd day of April, 2024.



GERALD L. JACKSON
UNITED STATES MAGISTRATE JUDGE